IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3.7.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.18489 of 1998
and
W.M.P.No.28030/1998

1.M.Ramaiyan
2.V.Ramaswamy
3.V.K.Muthuramalingam
4.M.Chinnathambi
5.A.Karuppiah

.. Petitioners

vs.

1.The Government of Tamilnadu
rep., by the Secretary to Govt.
Revenue Dept., Fort St. George
Chennai-600 009.

2.The Special Commissioner and
Commissioner for Land Administration
Ezhilagam, Chepauk
Chennai-600 005

3.The District Revenue officer
Thanjavur

4.Shamuganathan (decd.)

5.Leelavathi
6.Vijayan
7.Tmt.Kanagarani
8.Tmt.Tamilarasi
9.Udayakumar
10.Tmt.Anbukarasi
11.Ravikumar
12.Selvakumar
R5 to R12 substituted as per order
dt.25.8.06 in WPMP.38424/03.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari to call for the records of the 1st respondent relating to his order dt.4.11.1998 passed in G.O.(Nilai)

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No.889/Revenue Dept/Ni.A1(2) and quash the said order.

For Petitioners : Mr.M.Kalyanasundaram,
Senior Counsel, for
M/s.Md.Fiaz Hussain

For Respondents : Mr.C.Ramesh,
A.G.P., for R1 to R3.
M/s.T.S.Ramasamy &
Mr.G.Ravichandran,
for R5,R6,R8 to R12.

ORDER:

This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari to call for the records of the 1st respondent relating to his order dt.4.11.1998 passed in G.O.(Nilai) No.889/Revenue Dept/Ni.A1(2) and quash the said order. Heard the learned counsel appearing for the parties.

2.The writ petitioners are aggrieved by the order of the 3rd respondent herein dated 30.5.89 by which the 3rd respondent granted patta in favour of the 4th respondent for an extent of 69.56 acres in Ammayandi village and 33.07 acres in Panchanathipuram village, which was upheld by respondents 1 and 2 herein.

3.This case has got a chequered history. One Vijaya Raghunatha Muthukumara Vanangamudi Vazhuvatti Thevar was the Zamaindar of Sendangudi Zamin consisting of Ammayandi, panchanathipuram `and other villages. He died in 1925 and as he was unmarried his brother's 2 year old son succeeded. Thereafter his mother Thangammal Ayiyar succeeded to the zamin. After her death, there was a quarrel for heirship of zamin between Appan @ Kumarasamy, the sister's son of last zamindar on th one side and the pangalis of the Zamindar Singamuthu Vazhuvattiyar and others on the other side. As per the District Revenue Officer's order, Appan became the heir. Since the pangalis did not have enough resources to fight the litigation, they sought the help of Thiru Chockalingam Pillai, the father of the 4th respondent herein. As per the arrangement between them, the pangalis executed a sale deed dated 1.7.1943 conveying the zamin to Chokkalingam Pillai. Thereafter, Singamuthu Vazhuvattiar and his sons filed a suit in O.S.No.19/1947 on the file of the District court, Thanjavur to declare the sale deed dated 1.7.43 as sham and nominal. The suit ended in a compromise decree dated 11.9.1950. According to which, Chokkalingam Pillai was to get Rs.1,36,550/- as compensation as the village was taken over on abolition of Inam Tenure and 2/3rd of the waste lands reclaimed by him in Ammayandi village was to be retained by him. The remaining 1/3rd would go to Singamuthu Vazhuvattiar and his sons. The other suit in O.S.No.11/1943 on the file of the District court, Thanjavur between Appan and Chokkalingam Pillai went up to Supreme Court and the Supreme Court in C.A.No.35/1949 passed a compromise decree dated 30.1.1951, according to which Chokkalingam Pillai released his entire

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rights over the zamin and in turn he was to get a compensation of Rs.1,25,000/- and 70 acres of waste lands reclaimed by him in Panchanathipuram village.

4.The zamin was taken over by the Government on 3.5.1951 and Ryotwari Settlement was introduced under the Madras Estates Abolition of Zamindari and Conversion into Ryotwari Act (Tamil Nadu Act 26/1948). Chokkalingam Pillai died in 1959 and his son the 4th respondent herein made an Application on 24.3.1970 for grant of patta in respect of the waste lands in Ammayandi and panchanathipuram villages. By orders dated 7.7.1971 and 12.7.71, the D.R.O., Thanjavur rejected the application for patta for both the villages. A revision was filed against the orders of rejection and the same was also dismissed by the then Board of Revenue by order dated 17.5.76. However the Board granted patta for 86.79 acres in Ammayandi village and 39.48 acres in panchanathipuram village in favour of the 4th respondent against his claim of 124.56 acres in Ammayandi village and 98.86 acres in Panchanathipuram village. Aggrieved by the order of the Board in not granting the entire claim, the 4th respondent filed a revision before the Government. So also the objectors who were aggrieved by grant of patta by the Board. By order dated 22.3.80, the Government remanded the matter to the Board for fresh disposal. As the Board of Revenue was disbanded in 1980, the District Revenue Officer who was empowered to enquire into the matter by order dated 30.9.83 granted patta in favour of the 4th respondent for 69.56 acres in Ammayandi village and 33.07 acres in Panchanathipuram village. The said order was challenged before the Commissioner for Revenue Administration, who by order dated 7.10.85 set aside the order of DRO and remanded the matter to DRO for fresh consideration.

5.By order dated 30.5.89, the 3rd respondent/DRO herein, confirmed the earlier order dated 30.9.83 granting patta for 69.56 acres and 33.07 acres in favour of the 4th respondent. The objectors filed a revision against the order of the DRO before the 2nd respondent and the 2nd respondent by order dated 5.5.97 confirmed the order of the 3rd respondent. Against the order of the 2nd respondent, the objectors, i.e., the writ petitioners preferred a further revision to the Government, the 1st respondent herein, and the 1st respondent by order dated 4.11.98 confirmed the order of respondents 2 and 3 dated 5.5.97 and 30.5.89 respectively. Aggrieved by the above orders, the petitioners have filed the above writ petition. According to the writ petitioners, they are in occupation and cultivation of the lands as village communal lands which are now granted to the 4th respondent by issuing patta.

6.The 4th respondent died pending writ petition and as per order dated 25.8.2006 in WPMP No.38424/2003, respondents 5 to 12 were substituted as Legal Representatives of the 4th respondent. Respondents 5 to 12 except 7th respondent filed a counter affidavit wherein, a preliminary objection was raised as to the maintainability of the writ petition and the locus standi of the writ petitioners to file the writ petition. On facts, the respondents denied the entire averments and

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supported the orders of respondents 1 to 3 in granting patta to the 4th respondent.

7.Heard Mr.M.Kalyanasundaram, the learned Senior counsel for the writ petitioners, the learned Addl.Government pleader for respondents 1 to 3 and the learned counsel for respondents 5 to 12 (except respondent 7). I have also perused the documents and the judgments referred to by them in support of their submissions.

8.The learned Senior Counsel for the petitioners submitted that the compromise decree dated 30.1.1951 passed by the Supreme court in c.A.No.35/1949 is a judgment in rem and according to which the father of the 4th respondent is not eligible for any lands in Ammayandi village. Further the learned Senior counsel submitted that the writ petitioners have a legal right to oppose the grant of patta to the 4th respondent as they have been in continuous possession and enjoyment of the lands, which are communal lands. The learned Senior Counsel relied on the decision of the Rajasthan High Court reported in 1972 RAJ 180 (Sri Ram v. Prabhu Dayal) to submit that the Supreme Court judgment dated 30.1.1951 is a judgment in rem and not a judgment in personam. He further submitted that respondents 1 and 2 did not independently decide the issue and they simply followed the orders of the 3rd respondent which itself was not based on any evidence. The learned Senior counsel further pointed out that the 1st respondent-government straight away passed the orders confirming the orders of respondents 2 and 3 without even affording an opportunity to the petitioners to put forward their case with the available evidence.

9.The learned counsel appearing for respondents 5 to 12 (excepting respondent 7) seriously questioned the locus standi of the writ petitioners in invoking Article 226 of the Constitution of India. The learned counsel submitted that the writ petitioners are not rival claimants claiming patta under the Act 26/1948 and as such they have no legal right to maintain the writ petition itself. The learned counsel relied on the decisions of the Supreme court reported in AIR 1957 S.C.529 (Sohan lal v. Union of India), AIR 1962 S.C. 1044 (Cal.Gas Co.(Prop.) Ltd. v. State of W.B., and AIR 1964 S.C. 685 (State of Orissa v. Ram Chandra) to substantiate his submissions. The learned counsel further submitted that the Supreme Court judgment is not a judgment in rem and the writ petitioners are not parties before the Supreme court. Further the conditions mentioned in the Supreme Court judgment were not complied with by the parties and therefore it was not at all acted upon. The learned counsel further submitted that the writ petitioners are adjudicated as encroachers and even assuming that if they have some rights over the lands, they have to approach only the civil courts and not the writ petition under Article 226 of the Constitution of India.

10.I have considered the rival submissions carefully with regard to facts and citations.

11.Admittedly the 4th respondent when he was alive, made an

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Application for grant of patta in 1970, outside the scope of Abolition Act, in respect of waste lands in Ammayandi and Panchanathapuram villages. After two rounds of remand, the 3rd respondent by order dated 30.5.1989 confirmed the earlier order of the DRO dated 30.9.83 granting patta to the 4th respondent for an extent of 69.56 acres in Ammayandi village and 33.07 acres in Panchanathapuram village. In his order, the 3rd respondent after going through the evidence adduced before him held that it is an undisputed fact that the 4th respondent's father was declared land holder of Sendangudi Zamin on the date of taking over of the village under the Act of 26/1948. He also referred to the fact that there was Kudivaram or Melvaram claims before the settlement authorities for the lands in respect of which patta was now sought for. The 3rd respondent referred to account books produced by the 4th respondent for the year 1943, the notices issued to the landholder dated 10.8.1945 and 21.8.50 directing him to bring the lands under wet cultivation and the letter dated 28.7.75 of the ASO opining that the 4th respondent would have got patta had he applied in time before the settlement authorities themselves, came to the conclusion that the lands for which the patta was granted are only cultivable lands which were in possession and enjoyment of the 4th respondent's predecessors in title. Insofar as the claim of the objectors are concerned, the 3rd respondent found that the objectors encroached the lands, but the lands were not under their encroachment on the date of taking over the village under the Act 26/1948. Therefore the 3rd respondent held that the objectors are not eligible to get patta either under the Act or under the provisions of various Government Orders. Therefore the 3rd respondent passed an order granting patta in favour of the 4th respondent for the above said acres of lands in the above referred two villages.

12.The 2nd respondent, before whom the order of the 3rd respondent dated 30.5.1989 was assailed, re-appreciated the entire evidence and came to the same conclusion of the 3rd respondent. The 2nd respondent has also specifically referred to the fact that objectors did not have any specific claim under the Act and their intention is only to stop the issuance of patta to the 4th respondent. The 2nd respondent was also aware that the case of the 4th respondent was to be considered outside the scope of the Act and on the basis of G.O.Ms.No.1300 dated 30.4.1971 according to which, the lands should have been in possession and enjoyment of the claimants prior to and on and from the notified date. Thus the 2nd respondent confirmed the order of the 3rd respondent and the further revision before the Government was rejected by confirming the orders of respondents 2 and 3.

13.The orders of the authorities below are based on evidence, and such findings of the authorities cannot be easily disturbed by this court under Article 226 of the Constitution of India unless it is shown that the orders are perverse and are in violation of sound legal principles.

14.The crux of the argument of the learned Senior counsel for the petitioners is that the compromise decree passed by the Supreme Court is a judgment in Rem which will bind all the parties. According to the compromise decree dated 30.1.1951 the father of the 4th respondent is not

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entitled to any lands in Ammayandi village and he is entitled to an extent of 70 acres of land in Panchanathapuram village only. Therefore granting patta in Ammayandi village is obviously not in order, according to the learned Senior counsel.

15.I am not able to accept this submission of the learned Senior counsel.

16.A perusal of the Supreme court judgment dated 30.1.1951 reveals that there are certain conditions to be complied with by both the parties so as to bind the judgments on them and it is not established as to whether those conditions were fully complied with by the parties. Therefore without going into the question of whether the Supreme court judgment is a judgment in Rem or personam, I am of the considered view that such factual aspects could not be gone into in a writ petition filed under Article 226 of the Constitution of India especially when the respondents 5 to 12 (excepting 7) are contesting and disputing these facts put forward by the petitioners.

17.Insofar as the rights of the petitioners to maintain the writ petition are concerned, I find force in the submissions of the learned counsel for respondents 5 to 12 herein. Admittedly the petitioners are the encroachers that too after the notified date and in such circumstances, they have no legal right over the lands under their possession and therefore as rightly held by the authorities below, they could not prevent the 4th respondent from getting the patta from the Government that too, under the guidelines issued by the Government. If at all they have any right, over the lands under their possession it is for them to establish the same before a proper forum and they cannot maintain this writ petition opposing grant of patta to the 4th respondent especially when they are not claiming patta from the Government either under the Act or under the Government Orders issued in this regard. Therefore I do not find any merits in the above writ petition.

18.In AIR 1957 S.C. 529 (cited supra) the Supreme Court held that the Supreme Court will not enquire into the merits of the rival claims of title to the properties in dispute set up by the parties as it is a field of investigation which is more appropriate for a civil court in a properly constituted suit rather than for a court exercising the prerogative of issuing writs.

19.In AIR 1962 S.C.1044 (cited supra), the Supreme court held that Article 226 of the constitution of India confers a very wide powers on the High court to issue writs, but it is implicit in the exercise of extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.

20.In AIR 1964 S.C.685(cited supra) the Supreme court held that though the jurisdiction of the High Court under Article 226 is wide, it must be established that the party has a right and the said right is illegally invaded or threatened.

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21.From the above it is very clear that unless the petitioners have a legal right, they cannot invoke Article 226 of the constitution of India. It was already found by the authorities that the writ petitioners are only encroachers and therefore they do not have any legal right to file the above writ petition challenging the granting of patta to the 4th respondent.

22.The learned Senior Counsel submitted that the writ petitioners have a legal right under the provisions of the Tamil Nadu Encroachment Act, 1905 and therefore they can very well maintain the writ petition.

23.I am unable to accept the submissions of the learned Senior Counsel for the writ petitioners. The writ petitioners are not challenging the action of the Government by taking recourse to Land Encroachment Act. They are only assailing the orders of the authorities in granting patta under the Act 26/1948 and by the Government Orders issued in this regard. Therefore they should establish that they have a right either under the Act or under the guidelines issued in this regard. Therefore it cannot be contended that they have a legal right which is enforceable under Article 226 of the Constitution of India.

24.The learned Senior counsel for the writ petitioners finally submitted that as no opportunity was given by the 1st respondent before passing orders, the order is to be set aside and the same is to be remanded for fresh disposal after giving opportunity to the parties.

25.I am unable to accept this submission also. First of all, it is not known under what provision the petitioners filed the second revision before the Government. Further, I have already taken the view that the writ petitioners have to work out the remedy before the appropriate forum if they have any right over the lands as it is proved that they have no statutory right either under the Act 26/1948 or under the Government Orders. Therefore no useful purpose would be served by remanding the matter to the Government. Further the parties are agitating the issue from 1970 onwards and in the interest of justice, the litigation should come to an end rather than prolonging it endlessly, especially when the writ petitioners are found to be encroachers only.

26.In the result the writ petition is dismissed. No costs. The connected W.M.P., is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary to Govt.
Revenue Dept., Fort St. George
Chennai-600 009.

2.The Special Commissioner and
Commissioner for Land Administration
Ezhilagam, Chepauk
Chennai-600 005

3.The District Revenue officer
Thanjavur

1 cc to Mr. T.S.Ramaswamy Advocater SR.NO.40206
1 cc to Mr. Md.fiar Hussan Advocate SR.NO.40095

RS(co)
RD 18.7.07

Pre-delivery order,
W.P.18489/98.

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